

In the March Office action, claims 14-24 were rejected under 35 U.S.C. § 102(e) as being anticipated by or, in the alternative under 35 U.S.C. § 103(a) as obvious over Mathis et al. (6,129,755). Independent claim 14 has been amended to positively recite a shape memory alloy element having been deformed at or above M_d into an at least partially deformed configuration. It is believed that such a recitation is clearly patentable over the cited art which is silent regarding M_d (the maximum temperature at which martensite transformation can occur) and in fact teaches away from the subject matter of claim 14. With reference to column 9, lines 5-7, the Mathis patent teaches that a stent be cooled down to be martensitic, crimped and loaded into a sheath of a delivery system. Accordingly, the subject matter recited in independent claim 14 and the claims depending therefrom is distinguishable from the teachings of Mathis as the recited shape memory alloy is deformed at or above M_d . Therefore, it is believed that each of the pending claims define patentable subject matter.

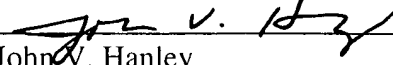
CONCLUSION

Applicants have attempted to completely respond to the rejections set forth in the outstanding Office action. In view of the above amendments and remarks, Applicant respectfully request that the application be reconsidered, the claims allowed and the application passed to issue.

Attached hereto is a marked-up version of the changes made to the claims by the current Amendment. The attached page is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE."

Respectfully submitted,

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VERSION 5 WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS

14. (Amended) A medical device and delivery system, comprising:
a shape memory alloy element having a restrained shape, a deployed shape and an associated M_d temperature, [wherein] the shape memory alloy element [is] having been deformed at or above M_d into an at least partially deformed configuration; and
a hollow delivery system holding the at least partially deformed shape memory alloy element in its restrained shape.

19. (Amended) The medical device and delivery system of claim 14, further comprising a restraint configured to receive the shaped memory alloy at a temperature at or above M_d , wherein the shape memory alloy is a tubular member with proximal and distal ends and the restraint is secured around the shape memory alloy in its deformed configuration.

21. (Amended) The medical device and delivery system of claim [14]20, wherein the mammalian body temperature is about 35 to 40 degrees C.

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